

Eric J. Shimanoff (ejs@cll.com)
Joel K. Schmidt (jks@cll.com)
COWAN, LIEBOWITZ & LATMAN, P.C.
1133 Avenue of the Americas
New York, NY 10036-6799
(212) 790-9200
Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
CYNTHIA M. FULLWOOD, individually and on
behalf of all others similarly situated,

No. 13 Civ. 7174 (KPF) (HP)

Plaintiff,

against

WOLFGANG'S STEAKHOUSE, INC. and ZMF
RESTAURANTS LLC,

Defendants.
----- x

DECLARATION OF LYDIA D'AMATO
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

LYDIA D'AMATO, pursuant to 28 U.S.C. §1746, declares as follows:

1. I am a member of Defendant ZMF Restaurants LLC ("ZMF") in the above-captioned action. I submit this declaration in support of Defendants' motion to dismiss the Second Amended Complaint ("SAC") filed by Plaintiff Cynthia M. Fullwood ("Plaintiff"). I make this declaration based on my personal knowledge and/or review of ZMF's files and records, and if called as a witness am competent to testify to the matters herein.

2. ZMF operates Wolfgang's Steakhouse located at 4 Park Avenue in New York, New York.

3. Defendant Wolfgang's Steakhouse, Inc. does not own, operate or manage any restaurant. It is an intellectual property holding company that owns the WOLFGANG'S

STEAKHOUSE mark and licenses it to ZMF.

4. In paragraph 62 of the SAC, Plaintiff alleges: "Upon information and belief, prior to the transaction at issue, Defendants received monthly statements from its merchant bank (or other similar entity that performed credit and debit card payment clearing services for Defendants) which apprised Defendants of its obligation to not print credit and debit card expiration dates."

5. Attached hereto as **Exhibit A** are true and correct copies of ZMF's Merchant Statements – Summary of Bank Card Deposits for July through September 2013 from Bank Associates Merchant Services, which is the entity that performed non-AMEX credit and/or debit card payment clearing/settlement services for ZMF. Non-relevant financial information has been redacted from these copies.

6. Attached hereto as **Exhibit B** are true and correct copies of ZMF's Merchant Financial Activity Statements for July through September 2013 from American Express, which is the entity that performed AMEX credit and/or debit card payment clearing/settlement services for ZMF. Non-relevant financial information has been redacted from these copies.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on January 29, 2015, in New York, New York


Lydia D'Amato